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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,391	01/28/2004	Anthony Di Bitonto	B0224.0079	2535
32172 7590 10/31/2007 DICKSTEIN SHAPIRO LLP 1177 AVENUE OF THE AMERICAS (6TH AVENUE) NEW YORK, NY 10036-2714			EXAMINER NGUYEN, PHONG H	
			ART UNIT 3724	PAPER NUMBER
			MAIL DATE 10/31/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/765,391

Applicant(s)

DI BITONTO ET AL.

Examiner

Phong H. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,5-8,16,17,20 and 22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,5-8,16,17,20 and 22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 16, 17 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Grassi (4,776,090).

Regarding claim 1, Grassi teaches a nail clipper comprising top and bottom elongated members (14 and 18) forming cutting edges (16 and 20), a post 26, a lever 32 lacking of a hole through which the post extends, and a bumper 42. See Figs. 1 and 2.

Regarding claim 16, the top and bottom elongated members being interconnected at distal ends (22 and 24) are best seen in Fig. 1 in Grassi.

Regarding claim 17, the top and bottom elongated members not being interconnected at distal ends (in the rear area 50 of element 46) are best seen in Fig. 1 in Grassi

Regarding claim 22, Grassi teaches a nail clipper comprising top and bottom elongated members (14 and 18) forming cutting edges (16 and 20) at proximal ends, a post 26, a bumper 42 and a lever 32 lacking of a hole through which the post extends, and wherein the top and bottom elongated members are not interconnected at the distal ends (in the rear area 50 of element 46). See Figs. 1 and 2.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 5-8, 16, 17, 20 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grassi (4,776,090) in view of Litton (Des. 392,419).

Regarding claim 1, Grassi teaches a nail clipper comprising top and bottom elongated members (14 and 18) forming cutting edges (16 and 20), a post 26, and a lever 32 lacking of a hole through which the post extends. See Figs. 1 and 2.

Grassi does not teach a bumper on the bottom surface of the bottom member 24.

Litton teaches providing a bumper on the bottom surface of a bottom member for comfortably holding the nail clipper. See Fig. 1.

Therefore, it would have been obvious to one skilled in the art at the time the invention was made to provide a bumper as taught Litton to the bottom surface of the bottom member of Grassi so that one can hold the nail clipper comfortably.

Regarding claim 5, a section of the bumper having a triangular shape is best seen in Fig. 1 in Litton.

Regarding claim 6, Grassi teaches the invention substantially as claimed except for the lever having a thumb accepting depression.

Litton teaches providing a thumb accepting depression on the lever for comfortably holding the nail clipper. See Fig. 1.

Therefore, it would have been obvious to one skilled in the art at the time the invention was made to provide a thumb accepting depression as taught Litton to the lever of Grassi so that one can hold the nail clipper comfortably.

Regarding claim 7, the cutting edges of the Grassi's nail clipper being at an angle with respect to a central longitudinal axis of the elongated member are best seen in Fig. 1 in Grassi.

Regarding claim 8, the cutting edges being disposed at an angle to a central longitudinal axis of the top and bottom elongated members are best seen in Fig. 1 in Grassi.

Regarding claim 16, the top and bottom elongated members being interconnected at the distal ends (22 and 24) are best seen in Fig. 1 in Grassi.

Regarding claim 17, the top and bottom elongated members not being interconnected at the distal ends (in the rear area 50 of element 46) are best seen in Fig. 1 in Grassi.

Regarding claim 22, Grassi teaches a nail clipper comprising top and bottom elongated members (14 and 18) forming cutting edges (16 and 20) at proximal ends, a post 26, and a lever 32 lacking of a hole through which the post extends, wherein the top and bottom elongated members are not interconnected at the distal ends (in the rear area 50 of element 46). See Figs. 1 and 2.

Grassi does not teach a bumper on the bottom surface of the bottom member 24.

Litton teaches providing a bumper on the bottom surface of a bottom member for comfortably holding the nail clipper. See Fig. 1.

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Therefore, it would have been obvious to one skilled in the art at the time the invention was made to provide a bumper as taught Litton to the bottom surface of the bottom member of Grassi so that one can hold the nail clipper comfortably.

Regarding claim 20, a section of the bumper having a triangular shape is best seen in Fig. 1 in Litton.

### ***Response to Arguments***

5. Applicant's arguments with respect to claims 1, 5-8, 16, 17, 20 and 22 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the

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advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phong H. Nguyen whose telephone number is 571-272-4510. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on 571-272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Timothy V Eley/  
Primary Examiner, A.U. 3724

PN:



October 28, 2007